

## **Part 10**

### **Amendment of Articles of Incorporation and Bylaws**

#### **16-6a-1001 Authority to amend articles of incorporation.**

- (1) A nonprofit corporation may amend its articles of incorporation at any time to:
  - (a) add or change a provision that is required or permitted in the articles of incorporation; or
  - (b) delete a provision not required in the articles of incorporation.
- (2) Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

Enacted by Chapter 300, 2000 General Session

#### **16-6a-1002 Amendment of articles of incorporation by board of directors or incorporators.**

- (1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt, without member approval, one or more amendments to the articles of incorporation to:
  - (a) delete the names and addresses of the initial directors;
  - (b) change the information required by Subsection 16-17-203(1), but an amendment is not required to change the information;
  - (c) change the corporate name by:
    - (i) substituting the word "corporation," "incorporated," "company," "limited," or an abbreviation of any such word for a similar word or abbreviation in the name; or
    - (ii) adding, deleting, or changing a geographical attribution; or
  - (d) make any other change expressly permitted by this chapter to be made without member action.
- (2) The board of directors may adopt, without member action, one or more amendments to the articles of incorporation to change the corporate name, if necessary, in connection with the reinstatement of a nonprofit corporation pursuant to Section 16-6a-1412.
- (3)
  - (a) Subject to any approval required pursuant to Section 16-6a-1013, if a nonprofit corporation has no members, no members entitled to vote on amendments, or no members yet admitted to membership, one or more amendments to the nonprofit corporation's articles of incorporation may be adopted by:
    - (i) its incorporators until directors have been chosen; or
    - (ii) its directors after the directors have been chosen.
  - (b) A nonprofit corporation described in Subsection (3)(a) shall provide notice of any meeting at which an amendment is to be voted upon.
  - (c) The notice required by Subsection (3)(b) shall:
    - (i) be in accordance with Section 16-6a-814;
    - (ii) state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles of incorporation; and
    - (iii)
      - (A) contain or be accompanied by a copy or summary of the amendment; or
      - (B) state the general nature of the amendment.
  - (d) An amendment described in Subsection (3)(a) shall be approved:
    - (i) by a majority of the incorporators, until directors have been chosen; or
    - (ii) after directors are chosen by a majority of the directors in office at the time the amendment is adopted or such greater number as is set forth in the bylaws.

Amended by Chapter 240, 2015 General Session

**16-6a-1003 Amendment of articles of incorporation by board of directors and members.**

- (1) The board of directors or the members representing at least 10% of all of the votes entitled to be cast on the amendment may propose an amendment to the articles of incorporation for submission to the members unless a different vote or voting class is required by:
  - (a) this chapter;
  - (b) the articles of incorporation;
  - (c) the bylaws; or
  - (d) the members or the board of directors acting pursuant to Subsection (5).
- (2) For an amendment to the articles of incorporation to be adopted pursuant to Subsection (1):
  - (a) the board of directors shall recommend the amendment to the members unless:
    - (i) the amendment is proposed by members; or
    - (ii) the board of directors:
      - (A) determines that because of conflict of interest or other special circumstances it should make no recommendation; and
      - (B) communicates the basis for its determination to the members with the amendment; and
  - (b) the members entitled to vote on the amendment shall approve the amendment as provided in Subsection (5).
- (3) The proposing board of directors or the proposing members may condition the effectiveness of the amendment on any basis.
- (4)
  - (a) The nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the amendment of the members' meeting at which the amendment will be voted upon.
  - (b) The notice required by Subsection (4)(a) shall:
    - (i) state that the purpose, or one of the purposes, of the meeting is to consider the amendment; and
    - (ii)
      - (A) contain or be accompanied by a copy or a summary of the amendment; or
      - (B) shall state the general nature of the amendment.
- (5) The amendment shall be approved by the votes required by Sections 16-6a-714 and 16-6a-715 by every voting group entitled to vote on the amendment unless a greater vote is required by:
  - (a) this chapter;
  - (b) the articles of incorporation;
  - (c) bylaws adopted by the members; or
  - (d) the proposing board of directors or the proposing members acting pursuant to Subsection (3).
- (6) If the board of directors or the members seek to have the amendment approved by the members by written consent or by written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

Amended by Chapter 240, 2015 General Session

**16-6a-1004 Voting on amendments of articles of incorporation by voting groups.**

- (1) Unless otherwise provided by this chapter or the articles of incorporation, if membership voting is otherwise required by this chapter, the members of a class who are entitled to vote are

entitled to vote as a separate voting group on an amendment to the articles of incorporation if the amendment would:

- (a) affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than the amendment would affect another class;
  - (b) change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;
  - (c) increase or decrease the number of memberships authorized for that class;
  - (d) increase the number of memberships authorized for another class;
  - (e) effect an exchange, reclassification, or termination of the memberships of that class; or
  - (f) authorize a new class of memberships.
- (2) If a class is to be divided into two or more classes as a result of an amendment to the articles of incorporation, the amendment shall be approved by the members of each class that would be created by the amendment.

Enacted by Chapter 300, 2000 General Session

**16-6a-1005 Articles of amendment to articles of incorporation.**

A nonprofit corporation amending its articles of incorporation shall deliver to the division for filing articles of amendment setting forth:

- (1) the name of the nonprofit corporation;
- (2) the text of each amendment adopted;
- (3) the date of each amendment's adoption;
- (4) if the amendment was adopted by the board of directors or incorporators without member action, a statement to that effect and that:
  - (a) the nonprofit corporation does not have members; or
  - (b) member action was not required;
- (5) if the amendment was adopted by the members, a statement that the number of votes cast for the amendment by the members or by each voting group entitled to vote separately on the amendment was sufficient for approval by the members or voting group respectively; and
- (6) if approval of the amendment by some person or persons other than the members, the board of directors, or the incorporators is required pursuant to Section 16-6a-1013, a statement that the approval was obtained.

Enacted by Chapter 300, 2000 General Session

**16-6a-1006 Restated articles of incorporation.**

- (1)
  - (a) The board of directors may restate the articles of incorporation at any time with or without member action.
  - (b) The incorporators of a nonprofit corporation may restate the articles of incorporation at any time if the nonprofit corporation:
    - (i) has no members; and
    - (ii) no directors have been chosen.
- (2)
  - (a) The restatement may include one or more amendments to the articles of incorporation.

- (b) Notwithstanding Subsection (1), if the restatement includes an amendment requiring member approval, it shall be adopted as provided in Section 16-6a-1003.
- (3)
  - (a) If the board of directors submits a restatement for member action, the nonprofit corporation shall give notice, in accordance with Section 16-6a-704, to each member entitled to vote on the restatement of the members' meeting at which the restatement will be voted upon.
  - (b) The notice required by Subsection (3)(a) shall:
    - (i) state that the purpose, or one of the purposes, of the meeting is to consider the restatement; and
    - (ii) contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.
- (4) A nonprofit corporation restating its articles of incorporation shall deliver to the division for filing articles of restatement setting forth:
  - (a) the name of the nonprofit corporation;
  - (b) the text of the restated articles of incorporation;
  - (c) if the restatement contains an amendment to the articles of incorporation that was adopted by the members, the information required by Subsection 16-6a-1005(5);
  - (d) if the restatement was adopted by the board of directors or incorporators without member action, a statement to that effect and that member action was not required; and
  - (e) the restatement does not need to contain the name or address of the incorporator or incorporators that were included in the articles of incorporation when originally filed.
- (5) Upon filing by the division or at any later effective date determined pursuant to Section 16-6a-108, restated articles of incorporation supersede the original articles of incorporation and all prior amendments to the original articles of incorporation.

Amended by Chapter 240, 2015 General Session

**16-6a-1007 Amendment of articles of incorporation pursuant to reorganization.**

- (1) Articles of incorporation may be amended, without action by the board of directors or members, to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under a statute of this state or of the United States if the articles of incorporation after amendment contain only provisions required or permitted by Section 16-6a-202.
- (2) For an amendment to the articles of incorporation to be made pursuant to Subsection (1), one or more individuals designated by the court shall deliver to the division for filing articles of amendment setting forth:
  - (a) the name of the nonprofit corporation;
  - (b) the text of each amendment approved by the court;
  - (c) the date of the court's order or decree approving the articles of amendment;
  - (d) the title of the reorganization proceeding in which the order or decree was entered; and
  - (e) a statement that the court had jurisdiction of the proceeding under a specified statute of this state or of the United States.
- (3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Enacted by Chapter 300, 2000 General Session

**16-6a-1008 Conversion to a business corporation.**

- (1)
  - (a) A domestic nonprofit corporation may convert to a corporation subject to Chapter 10a, Utah Revised Business Corporation Act, by filing an amendment of its articles of incorporation with the division pursuant to this section.
  - (b) The day on which a nonprofit domestic corporation files an amendment under this section, the domestic nonprofit corporation becomes a corporation subject to Chapter 10a, Utah Revised Business Corporation Act, except that, notwithstanding Section 16-10a-203, the existence of the nonprofit corporation is considered to commence on the day on which the converting corporation:
    - (i) commenced its existence under this chapter; or
    - (ii) otherwise was created, formed, incorporated, or came into being.
- (2) The amendment of the articles of incorporation to convert to a corporation shall:
  - (a) revise the statement of purpose;
  - (b) delete:
    - (i) the authorization for members; and
    - (ii) any other provisions relating to memberships;
  - (c) authorize shares:
    - (i) stating the number of shares; and
    - (ii) including the information required by Section 16-10a-601 with respect to each class of shares the corporation is to be authorized to issue;
  - (d) make such other changes as may be necessary or desired; and
  - (e) if the corporation has any members, provide for:
    - (i) the cancellation of the memberships; or
    - (ii) the conversion of the memberships to shares of the corporation.
- (3) If the nonprofit corporation has any voting members, an amendment to convert to a corporation shall be approved by all of the voting members regardless of limitations or restrictions on the voting rights of the members.
- (4) If an amendment to the articles of incorporation filed pursuant to this section is included in a merger agreement, this section applies, except that any provisions for cancellation or conversion of memberships:
  - (a) shall be in the merger agreement; and
  - (b) may not be in the amendment of the articles of incorporation.
- (5) A conversion under this section may not result in a violation, directly or indirectly, of:
  - (a) Section 16-6a-1301; or
  - (b) any other provision of this chapter.
- (6) The conversion of a nonprofit corporation into a corporation does not affect:
  - (a) an obligation or liability of the converting nonprofit corporation incurred before its conversion to a corporation; or
  - (b) the personal liability of any person incurred before the conversion.
- (7)
  - (a)
    - (i) When a conversion is effective under this section, for purposes of the laws of this state, the things listed in Subsection (7)(a)(ii):
      - (A) vest in the corporation to which the nonprofit corporation converts;
      - (B) are the property of the corporation; and
      - (C) are not considered transferred by the converting nonprofit corporation to the corporation by operation of this Subsection (7)(a).
    - (ii) This Subsection (7)(a) applies to the following of the converting nonprofit corporation:

- (A) its rights, privileges, and powers;
  - (B) its interests in property, whether real, personal, or mixed;
  - (C) debts due to the converting nonprofit corporation;
  - (D) the debts, liabilities, and duties of the converting nonprofit corporation;
  - (E) the rights and obligations under contract of the converting nonprofit corporation; and
  - (F) other things and causes of action belonging to the converting nonprofit corporation.
- (b) The title to any real property vested by deed or otherwise in a nonprofit corporation converting to a corporation does not revert and is not in any way impaired by reason of this chapter or of the conversion.
- (c) A right of a creditor or a lien on property of a converting nonprofit corporation that is described in Subsection (6)(a) or (b) is preserved unimpaired.
- (d) A debt, liability, or duty of a converting nonprofit corporation:
- (i) remains attached to the corporation to which the nonprofit corporation converts; and
  - (ii) may be enforced against the corporation to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the corporation in its capacity as a corporation.
- (e) A converted nonprofit corporation upon conversion to a corporation pursuant to this section is considered the same entity as the corporation.
- (f) In connection with a conversion of a nonprofit corporation to a corporation under this section, the interests or rights in the nonprofit corporation which is to be converted may be exchanged or converted into one or more of the following:
- (i) cash, property, interests, or rights in the corporation to which it is converted; or
  - (ii) cash, property or interests in, or rights in another entity.
- (g) Unless otherwise agreed:
- (i) a converting nonprofit corporation is not required solely as a result of the conversion to:
    - (A) wind up its affairs;
    - (B) pay its liabilities; or
    - (C) distribute its assets; and
  - (ii) a conversion is not considered to constitute a dissolution of the nonprofit corporation, but constitutes a continuation of the existence of the nonprofit corporation in the form of a corporation.

Amended by Chapter 240, 2015 General Session

**16-6a-1008.7 Conversion to or from a domestic limited liability company.**

- (1)
- (a) A domestic nonprofit corporation may convert to a domestic limited liability company subject to Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, as appropriate pursuant to Section 48-3a-1405, by complying with:
- (i) this Subsection (1); and
  - (ii) Section 48-2c-1401 or 48-3a-1041.
- (b) If a domestic nonprofit corporation converts to a domestic limited liability company in accordance with this Subsection (1), the articles of conversion or statement of conversion, as applicable, shall:
- (i) comply with Section 48-2c-1402 or Sections 48-3a-1042 and 48-3a-1045; and
  - (ii) if the corporation has any members, provide for:
    - (A) the cancellation of any membership; or

- (B) the conversion of any membership in the domestic nonprofit corporation to a membership interest in the domestic limited liability company.
- (c) Before articles of conversion or statement of conversion may be filed with the division, the conversion shall be approved:
  - (i) in the manner provided for the articles of incorporation or bylaws of the domestic nonprofit corporation; or
  - (ii) if the articles of incorporation or bylaws of the domestic nonprofit corporation do not provide the method for approval:
    - (A) if the domestic nonprofit corporation has voting members, by all of the members of the domestic nonprofit corporation regardless of limitations or restrictions on the voting rights of the members; or
    - (B) if the nonprofit domestic corporation does not have voting members, by a majority of:
      - (I) the directors in office at the time the conversion is approved by the board of directors; or
      - (II) if directors have not been appointed or elected, the incorporators.
- (2) A domestic limited liability company may convert to a domestic nonprofit corporation subject to this chapter by:
  - (a) filing articles of incorporation in accordance with this chapter; and
  - (b) complying with Section 48-2c-1406 or 48-3a-1041, as appropriate pursuant to Section 48-3a-1405.
- (3) Any conversion under this section may not result in a violation, directly or indirectly, of:
  - (a) Section 16-6a-1301; or
  - (b) any other provision of this chapter.

Amended by Chapter 412, 2013 General Session

**16-6a-1009 Effect of amendment of articles of incorporation.**

- (1) An amendment to the articles of incorporation does not affect:
  - (a) any existing right of persons other than members;
  - (b) any cause of action existing against or in favor of the nonprofit corporation; or
  - (c) any proceeding to which the nonprofit corporation is a party.
- (2) An amendment changing a nonprofit corporation's corporate name does not abate a proceeding brought by or against a nonprofit corporation in its former corporate name.

Enacted by Chapter 300, 2000 General Session

**16-6a-1010 Amendment of bylaws by board of directors or members.**

- (1) The board of directors may amend the bylaws at any time to add, change, or delete a provision, unless:
  - (a) this chapter or the articles of incorporation or bylaws:
    - (i) reserve the power exclusively to the members in whole or part; or
    - (ii) otherwise prohibit the board of directors from amending the bylaws to add, change, or delete a provision; or
  - (b) it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.
- (2)
  - (a) Unless otherwise provided by the bylaws, the members may amend the bylaws even though the bylaws may also be amended by the board of directors.

- (b) Amendments to the bylaws by members shall be made in accordance with Sections 16-6a-1003 and 16-6a-1004 as if each reference in Sections 16-6a-1003 and 16-6a-1004 to the article of incorporation was a reference to the bylaws.

Amended by Chapter 228, 2006 General Session

**16-6a-1011 Bylaw changing quorum or voting requirement for members.**

- (1)
  - (a) If authorized by the articles of incorporation, the members may adopt, amend, or repeal bylaws that fix a greater quorum or voting requirement for members, or voting groups of members, than is required by this chapter.
  - (b) An action by the members under Subsection (1)(a) is subject to Part 6, Members, and Part 7, Member Meetings and Voting.
- (2) Bylaws that fix a greater quorum requirement or a greater voting requirement for members pursuant to Section 16-6a-716 may not be amended by the board of directors.

Amended by Chapter 189, 2014 General Session

**16-6a-1012 Bylaw changing quorum or voting requirement for directors.**

- (1) Bylaws that fix a greater quorum or voting requirement for the board of directors may be amended:
  - (a) if adopted by the members, only by the members; or
  - (b) if adopted by the board of directors, by:
    - (i) the members; or
    - (ii) the board of directors.
- (2) Bylaws adopted or amended by the members that fix a greater quorum or voting requirement for the board of directors may provide that the bylaws may be amended only by a specified vote of:
  - (a) the members; or
  - (b) the board of directors.
- (3) Action by the board of directors under Subsection (1)(b) to adopt or amend bylaws that change the quorum or voting requirement for the board of directors shall meet the greater of the quorum and voting requirement for taking the action:
  - (a) then in effect; or
  - (b) proposed to be adopted.

Enacted by Chapter 300, 2000 General Session

**16-6a-1013 Approval by third persons.**

- (1) The articles of incorporation may require an amendment to the articles of incorporation or bylaws to be approved in writing by a specified person or persons other than the board of directors.
- (2) A provision permitted under Subsection (1) may only be amended with the approval in writing of the person or persons specified in the provision.

Enacted by Chapter 300, 2000 General Session

**16-6a-1014 Amendment terminating members or redeeming or canceling memberships.**



- (1) An amendment to the articles of incorporation or bylaws of a nonprofit corporation shall meet the requirements of this chapter and this section if the amendment would:
  - (a) terminate all members or any class of members; or
  - (b) redeem or cancel all memberships or any class of memberships.
- (2) Before adopting a resolution proposing an amendment as described in Subsection (1), the board of directors of a nonprofit corporation shall give notice of the general nature of the amendment to the members.

Enacted by Chapter 300, 2000 General Session